IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02-12-2008

Coram:

The Honourable Mr.Justice M.JAICHANDREN

W.P.No.221 of 2003

A.P.Dhayalan .. Petitioner.

Versus

1.The Collector,
Kancheepuram, Kancheepuram District.

2.The Tahsildar,
Chengalpattu, Kancheepuram District. .. Respondents.

Prayer: Petition filed seeking for a writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent, dated 2.12.2002, and quash the same and consequently direct the first respondent to issue patta for the land in petitioner's possession in S.No.230/2, Alathur, Chengalpattu Taluk, as per the orders of the Government of Tamil Nadu in G.O.Ms.No.168, Revenue [(Ni.Mu.1(2)] Department, dated 27.3.2000, and Government Letter No.11414/Ni.Mu.1(2)/ 2000-5, dated 2.5.2000.

For Petitioner : Mr.P.Rajendran
For Respondents : Mr.P.Muthukumar
Government Advocate

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

2. This writ petition has been filed by the petitioner stating that he is residing at Kamarajar Street, Alathur, Chengalpattu Taluk, Kancheepuram District. The land under the occupation of the petitioner is comprised in S.No.230/2. The said land has been classified as `Thangal' (Eri Poramboke) in the revenue records. The land which is occupied by the petitioner is at a higher level. Therefore, at no point of time it is flooded by water.

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3. It has also been stated that the Alathur Panchayat has laid roads and has also provided water connection to the house situated in the poramboke land. Sodium Vapour lamps have also been installed along the roads. All the expenditures were incurred by the Panchayat after getting the due sanction from the Block Development Officer, Thirupporur. The Alathur Panchayat had also constructed a room providing a television set enabling the public to view the televised programmes.

4. It has also been stated that the petitioner has been residing in his house for the past more than 20 years. He is paying the House Tax, the Water Tax, Library Cess etc., to the Alathur Panchayat. The penal assessment has also been levied for the land and the petitioner has been paying the same, regularly. The Tamilnadu Electricity Board has provided electricity connection to the premises of the petitioner. The revenue authorities had given a no objection letter to the Electricity Board. A Family Ration card has also been issued to the petitioner and his name is found in the voter's list.

5. It has also been stated that in the year 2000, the Government of Tamilnadu had issues orders in G.O.Ms.No.168, Revenue [Ni.Mu.1(2)] Department, dated 27.3.2000, directing that the persons who had constructed houses on poramboke lands and residing there for more than 10 years may be assigned house site pattas for the said lands. Thereafter, the Government had issued further orders in Government Letter No.11414/Ni.Mu.1(2)/2000-5, dated 2.5.2000, to clarify that even persons who had constructed houses and are staying for a period of two years on a poramboke land can be assigned patta, if the said land is comprised in the same survey number in which the persons had constructed the houses and residing for more than ten years. Since the petitioner has been residing in the said house for several years, he had submitted an application to the District Collector, Kancheepuram, on 12.8.2002, requesting him to grant patta for the said land. Similarly, applications have been given by all the occupants residing in the said area. However, no action had been taken by the authorities concerned to grant patta to the petitioner and to the other similarly placed persons.

6. While so, the Tahsildar, Chengalpattu, the second respondent herein, had issued a notice, dated 12.9.2002, under Section 7 of the Tamilnadu Land Encroachment Act, 1905, calling upon the petitioner to show cause as to why he should not be proceeded against, under Section 6 of the said Act. The petitioner had submitted his explanation immediately after the receipt of the said notice. However, the second respondent had issued an order, dated 2.12.2002, under Section 6 of the Tamilnadu Land Encroachment Act, 1905, directing the petitioner to vacate the land under his occupation, within seven days of the receipt of the said order, stating that if he fails to do so, he would be summarily evicted from the said place. The order was served on the petitioner, on 20.12.2002. Since the impugned order is contrary to law, illegal, unjust and liable to be set aside, the petitioner has preferred

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the present writ petition before this Court, under Article 226 of the Constitution of India

7. No counter affidavit has been filed on behalf of the respondents.

8. The learned counsel appearing for the petitioner has submitted that the issuing of show cause notice, under Section 7 of the Tamilnadu Land Encroachment Act, 1905, is not an empty formality. When the statute stipulates issuing of a show cause notice, it follows that the reasons given by the concerned person, in his reply to the show cause notice, must be considered before a decision is arrived at. In the present case, the second respondent had issued the impugned order in a printed format without applying his mind to the explanation submitted by the petitioner. Hence, the impugned order is arbitrary and illegal. The petitioner has been paying the House tax to the Alathur Panchayat for several years. The Tamilnadu Electricity Board had provided electricity connection to the premises of the petitioner after obtaining a `No Objection Certificate' from the revenue authorities. Family ration card had also been issued to the petitioner and his name finds a place in the voter's list. The Alathur Panchayat had laid roads and provided water connection to the house site in the poramboke land. Sodium vapour lamps had been fixed along the roads. All the expenditures were incurred by the Panchayat after getting due sanction from the Block Development Officer, Thirupporur. The petitioner has been paying House Tax, Water Tax, Library Cess etc., to the Alathur Panchayat. Penal assessment has also been levied for the said land and he has been paying the same regularly. Further, no useful purpose would be served by evicting the petitioner from the land under his occupation. It is not causing any obstruction or hindrance to the free flow of water as the land under the petitioner's occupation is at a higher level. The second respondent had passed the impugned order without considering the relevant Government orders in favour of the petitioner, including G.O.Ms.No.168, Revenue [(Ni.Mu.1(2)] Department, dated 27.3.2000, and the Government Letter No.11414/Ni.Mu.1(2)/2000-5, dated 2.5.2000. In such circumstances, the impugned order of the second respondent is liable to be set aside.

9. The learned counsel appearing for the respondents had submitted that the petitioner has no right over the land as he is occupying the same as an encroacher. Even if certain facilities had been provided by the local authorities, it does not vest any right in the petitioner as he is occupying the Eri Poramboke which belongs to the Government. The Government order in G.O.Ms.No.168, Revenue [(Ni.Mu.1(2)] Department, dated 27.3.2000, only states that the Government may allot the land to various persons, who are in occupation of the land, if it is found that the land is not required for any other purpose. Further, the petitioner ought to have filed an appeal, under Section 10 of the Tamilnadu Land Encroachment Act, 1905, challenging the order passed, under Section 6 of the said act. In such circumstances, the writ petition is not maintainable.

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10. In view of the submissions made by the learned counsel for the petitioner, as well as the learned counsel appearing for the respondents and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason for this Court to grant the reliefs, as prayed for the in the writ petition.

11. Since there is no right vested in the petitioner to occupy the land, categorised as Eri Poramboke, the present writ petition cannot be maintained. However, in view of the various reasons stated by the petitioner, it is open to the petitioner to file an appeal before the first respondent, invoking Section 10 of the Tamilnadu Land Encroachment Act, 1905, within a period of four weeks from the date of receipt of a copy of this order. On such appeal being filed, the first respondent shall dispose of the same, on merits and in accordance with law, after giving the petitioner an opportunity of personal hearing, within a period of twelve weeks thereafter. Accordingly, the writ petition stands dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

csh

To

1.The Collector,
Kancheepuram, Kancheepuram District.

2.The Tahsildar,
Chengalpattu, Kancheepuram District.

1 cc To The Government Pleader, SR.67775.

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